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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-.....

LEWIS WILLIAM POE,
Petitioner,

vs.

U.S. DISTRICT JUDGE SAMUEL P. KING,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LEWIS WILLIAM POE
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Petitioner Pro Se

January, 1980.

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INDEX

Opinions Below 1
Jurisdiction 1
Questions Presented 2
Constitutional Provisions and Statutes Involved 2
Statement of the Case 3
Reasons for Granting the Writ 4
Conclusion 5
Appendix—
A. 9th CCA Order, denying petition for writ of mandamus A1
B. Petition for Writ of Mandamus Directed to a Judge A2
Motion for Disqualification of Judge King A6
Affidavit of Lewis W. Poe A8

Table of Citations

Cases

Butz v. Economou, 438 U.S. 478 (1978) 5

Constitution and Statutes

U.S. Const., Article VI 2
U.S. Const., Fifth Amendment 2
28 U.S.C. 144 ..... 2, 3, 4
28 U.S.C. 453 ..... 2, 3, 5
28 U.S.C. 455 3
28 U.S.C. 1254(1) 1
28 U.S.C. 1292(b) 3

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Lewis William Poe, petitioner, prays for a writ of certiorari to review the judgment of a two-judge panel of the U. S. Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

None. The Court of Appeals rendered judgment without opinion.

JURISDICTION

The Order (App. A, *infra*, p. A1) of the Court of Appeals was filed on November 28, 1979. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Is the Affidavit of Lewis W. Poe (see App. B, *infra*, pp. A8-A17) *sufficient* to invoke the protection and due process provisions of 28 U.S.C. 144? (Yes)

2. If so, then is 28 U.S.C. 144 going to be fully, properly, and promptly enforced by Judicial Officers of the United States, pursuant to Article VI of the Constitution and 28 U.S.C. 453?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article VI of the Constitution provides, in relevant part:

> This Constitution, and the Laws of the United States * * * shall be the supreme Law of the Land; * * *.
>
> * * * and all * * * judicial Officers, * * * of the United States * * *, shall be bound by Oath or Affirmation, to support this Constitution;

The Fifth Amendment provides, in part:

> No person shall * * * be deprived of life, liberty, or property, without due process of law;

28 U.S.C. § 453 provides, in part:

> Each justice or judge * * * shall take the following oath * * *:
>
> > "I, ..., do solemnly swear (or affirm) that I will administer justice, * * *, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me * * *, agreeably to the Constitution and laws of the United States. So help me God."

28 U.S.C. § 144 provides, in part:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that a judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

28 U.S.C. § 455 provides, in part:

> (a) Any justice, judge, * * * shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

STATEMENT OF THE CASE

On January 7, 1976, Mr. Poe filed a Complaint in the U.S. District Court of Hawaii in Civil Action No. 76-0005, *Poe v. General Kuyk, et al.*

On June 25, 1979, Poe filed a "Motion for Disqualification of Judge," *without a supporting affidavit,* pursuant to 28 U.S.C. 455. On July 31, 1979, the district court filed its Order Denying Plaintiff's Motion To Disqualify Judge.

On August 8, 1979, Poe filed a "Motion for Disqualification of Judge King under 28 U.S.C. 144; or, in the alternative, Motion for Interlocutory Appeal Pursuant to 28 U.S.C. 1292(b)." (App. B, *infra*, pp. A6-A17).

On August 15, 1979, U.S. District Judge Samuel P. King filed, *without a hearing and oral argument,* his order denying plaintiff's motions for his disqualification and for an interlocutory appeal.

On September 13, 1979, Poe filed his Petition For Writ Of Mandamus Directed To A Judge, Docket No. 79-7462, in the Court of Appeals for the Ninth Circuit. (App. B, *infra,* pp. A2-A17). The Court of Appeals never ordered the respondent judge to file an answer to Poe's mandamus petition; hence, briefs were not forthcoming, and no oral argument was scheduled.

On November 28, 1979, a two-judge panel of the Ninth Circuit filed its order (App. A, *infra,* p. A1), denying Poe's petition for a writ of mandamus.

REASONS FOR GRANTING THE WRIT

A writ of certiorari should issue because:

1. The Affidavit of Lewis W. Poe (App. B, *infra,* pp. A8-A17) is *clearly* a timely and *sufficient* affidavit within the meaning and scope of 28 U.S.C. 144. Thus, the law clearly commands the district judge not to proceed any further therein and that another judge shall be assigned thereto.

28 U.S.C. 144 is a valid law which is *not* being enforced by a two-judge panel of the Ninth Circuit and a U.S. District Judge in the District of Hawaii. Apparently, judicial officers of the United States can do whatever they darn please *in defiance of the law.* How quickly we forget that the laws of the United States are the supreme Law of the Land.

The Court of Appeals has decided an important legal question contrary to the applicable law. The Court of Appeals has sanctioned a *clear departure of the District Court* from the requirements and mandate of statutory law so as to call for a *summary* exercise of the Supreme Court's power of supervision.

2. 28 U.S.C. 453 is a law of the United States whose spirit and language are in harmony with Article VI of the Constitution. It is clear that federal judges who have freely undertaken a public duty to serve faithfully are subject to the restrictions and obligations imposed by the Constitution, laws of the United States, and their Oath of Office.

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government from the highest to the lowest are creatures of the law, and are bound to obey it. * * *." *Butz v. Economou,* 438 U.S. 478, 98 S.Ct. 2894, 2910-2911, 57 L.Ed.2d 895 (1978).

The Supreme Court should be concerned with the *actual and theoretical* administration of justice and should make certain that the inferior courts are fully and properly enforcing the laws of the United States.

CONCLUSION

For the reasons and authorities hereinabove stated, the petitioner requests that this Court grant this petition for a writ of certiorari *and summarily reverse* the judgment of a two-judge panel of the Court of Appeals *with instructions* to the Court of Appeals to grant Mr. Poe's Petition for Writ of Mandamus Directed to a Judge in Docket No. 79-7462, 9th CCA.

Respectfully submitted,

LEWIS WILLIAM POE
Petitioner Pro Se

January, 1980.

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 79-7462

D.C. #CV76-5 SPK HAWAII

LEWIS WILLIAM POE,
Petitioner,

vs.

U.S. DISTRICT COURT FOR THE DISTRICT OF HAWAII,
Respondent,

and

GENERAL CHARLES F. G. KUYK, JR., et al.,
Real Parties In-Interest.

ORDER

(Filed November 28, 1979)

Before: KENNEDY and FLETCHER, Circuit Judges.

Upon due consideration, the petition for writ of mandamus is denied.

Mo Cal 11/19/79

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 79-7462

D.C. #76-0005 Hawaii (Honolulu)
LEWIS WILLIAM POE,
Petitioner,

vs.

U.S. DISTRICT COURT FOR THE DISTRICT OF HAWAII,
Respondent,

and

GENERAL CHARLES F. G. KUYK, JR., et al.,
Real Parties in Interest.

PETITION FOR WRIT OF MANDAMUS DIRECTED TO A JUDGE

(Filed September 13, 1979)

Mr. Poe, petitioner, regretfully asks this Court of Appeals for a Writ of Mandamus directed to U. S. District Judge Samuel P. King, District of Hawaii, requiring that he no longer sit on any proceeding in the case of *Poe v. General Kuyk, Jr., et al.*, in Civil No. 76-0005, District of Hawaii.

STATEMENT OF THE ISSUE

1. Is the Affidavit of Lewis W. Poe (Exhibit A) a timely and sufficient affidavit to effectuate the purpose and intent of 28 U.S.C. 144?

2. Is a law of the United States, i.e., 28 U.S.C. 144, going to be fully and properly enforced by the federal judiciary, pursuant to Article VI of the Constitution?

STATEMENT OF FACTS

On Jan. 7, 1976, Poe filed a Complaint in the U. S. District Court for the District of Hawaii in Civil Action No. 76-0005, *Poe v. General Kuyk, et al.*

On March 12, 1976, the defendants' Motion to Dismiss was granted by the district court.

On May 12, 1976, Poe filed a Notice of Appeal in the district court.

On Jan. 12, 1977, this Court of Appeals dismissed Mr. Poe's appeal on the ground that the Ninth Circuit had no jurisdiction to hear the appeal, stating:

> "The district court dismissed the complaint with leave to amend; the district court has never dismissed the action. * * *, and there is no judgment from which an appeal can be taken."

On Jan. 31, 1977, the *Judgment* of the District Court was filed by the district court.

On March 4, 1977, Mr. Poe filed a timely "New Notice of Appeal."

On Feb. 7, 1979, oral argument was heard by a panel of the Ninth Circuit in San Francisco in USCA No. 77-1674 (formerly USCA No. 76-2304).

In its April 12, 1979 Memorandum, the Ninth Circuit stated:

> "We reverse and remand so that Poe can have another opportunity to amend."

On May 14, 1979, the Judgment of the Court of Appeals was filed in the U.S. District Court for the District of Hawaii.

On June 25, 1979, Poe filed a "Motion for Disqualification of Judge" in Civil No. 76-0005 pursuant to 28 U.S.C. § 455.

On July 31, 1979, the district court filed its Order Denying Plaintiff's Motion To Disqualify Judge.

On August 8, 1979, Poe filed a "Motion for Disqualification of Judge King under 28 U.S.C. 144; Or, in the alternative, Motion for Interlocutory Appeal Pursuant to 28 U.S.C. 1292(b)." See Exhibit A, attached hereto and incorporated herein.

On August 15, 1979, the district court filed, without a hearing and oral argument, its Order denying plaintiff's motions for disqualification of Judge and for interlocutory appeal.

REASONS WHY WRIT SHOULD ISSUE

1. Because 28 U.S.C. § 144 is a *valid law* of the United States.
2. Because the 6-page Affidavit of Lewis W. Poe (see Exhibit A herein) is *sufficient* to indicate that prejudice exists in one form or another.
3. Because the Constitution and *the Laws* of the United States are the supreme Law of the Land. See Article VI of the Constitution.
4. Because all judicial Officers are bound by Oath to support the Constitution, and each judge of the United States has taken an oath or affirmation (28 U.S.C. 453) to faithfully and impartially discharge and perform all his/her duties, agreeably to the Constitution *and laws* of the United States.

CONCLUSION AND RELIEF SOUGHT

The District Judge before whom the matter is pending had two distinct opportunities to disqualify himself. One opportunity was somewhat "voluntary" in nature, whereas the second opportunity was more mandatory in nature.

The judge's impartiality might reasonably be questioned, and the belief that bias or prejudice exists, or may exist, or had existed, is sufficiently supported by the 6-page Affidavit of Lewis W. Poe, dated August 7, 1979.

WHEREFORE, another judge should be assigned to hear Civil Action No. 76-0005 in the Judicial District of Hawaii.

/s/ Lewis William Poe
Lewis William Poe, Petitioner
3853-C Keanu St.,
Honolulu, HI 96816
Ofc: (808) 548-7153 or
548-7154;
Res: (808) 734-6327.

DATED: September 11, 1979
Honolulu, Hawaii.

CERTIFICATE OF SERVICE

I certify that on this 11th day of September 1979, a copy of the foregoing document, including Exhibit A mentioned therein, was served by mail upon:

The Honorable Samuel P. King
U. S. District Court for District of Hawaii
P.O. Box 50129,
Honolulu, HI 96850,

and the

U. S. Attorney for the District of Hawaii
Room C-242, U. S. Courthouse,
300 Ala Moana Blvd., Box 50183,
Honolulu, HI 96850.

/s/ Lewis Poe
Lewis Poe

Exhibit A

In the United States District Court
for the District of Hawaii
Civil No. 76-0005.

LEWIS WILLIAM POE,
Plaintiff,

vs.

GENERAL CHARLES F. G. KUYK, JR., et al.,
Defendants.

Motion for Disqualification of Judge King Under 28 U.S.C. 144; or, in the Alternative, Motion for Interlocutory Appeal Pursuant to 28 U.S.C. 1292(b)

(Filed August 8, 1979)

Plaintiff is timely filing the attached AFFIDAVIT of LEWIS W. POE, plaintiff herein, declaring that U.S. District Judge Samuel P. King, before whom this lawsuit is pending, has a personal bias or prejudice either against him or in favor of the military in general, or in favor of the U. S. Attorney who is representing the named military defendants.

Plaintiff *pro se* certifies that said AFFIDAVIT is made in good faith.

Under 28 U.S.C. 144, plaintiff moves (1) that Judge King should proceed no further herein and that an objective and neutral judge be assigned to hear this case; (2) that Judge King should *not* decide the *sufficiency* of the attached Affidavit due to prejudice, bias, conflict of interest, and/or the appearance of a conflict of interest; (3) that another judge, such as Ninth Circuit Judges Walter Ely or Herbert Y. C. Choy, adjudicate whether the attached Affidavit is sufficient to support this motion; (4) alternatively, if Judge King persists in determining the sufficiency of said Affidavit and if he denies this Motion for his disqualification, plaintiff moves that this Court certify in its "order of denial" that plaintiff may take an Interlocutory Appeal to the U. S. Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. § 1292(b).

In support of this Motion, see the attached AFFIDAVIT of LEWIS W. POE.

/s/ Lewis Poe
Lewis Poe, Plaintiff Pro Se

DATED: August 7, 1979,
Honolulu, Hawaii.

CERTIFICATE OF SERVICE

I certify that on this 7th day of August 1979, a copy of the within/foregoing document was served by mail/by hand-delivery upon the U. S. Attorney for the District of Hawaii, Room C-242, U. S. Courthouse, 300 Ala Moana Blvd., Box 50183, Honolulu, Hawaii 96850.

/s/ Lewis Poe
Lewis Poe

AFFIDAVIT OF LEWIS W. POE

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

LEWIS W. POE, being first duly sworn on oath, deposes and says:

1. That affiant is an American citizen; a resident of Honolulu; age 47 years; an inspector with the Department of Agriculture, State of Hawaii; the plaintiff pro se in Civil Action No. 76-0005, *Poe v. General Charles F. G. Kuyk, Jr., et al.*

2. That Judge Samuel P. King is not a neutral, impartial judge in this suit. On page 3 of the July 9, 1979 Transcript of Proceedings in Civil No. 76-0005, we find the following colloquy:

> "MR. POE: [Your] Allowing violations of the Federal Rules of Civil Procedure, arguing for the defendants, not being a neutral objective judge.
>
> "THE COURT: Well, maybe I ought to try to argue your side of the case. * * *."

Thus, Judge King admitted he has argued for *an* adversary party and is now suggesting that he argue on *my* behalf. I do not believe he should be arguing for *either* side. He is supposed to be an impartial, neutral judge—not an adversary party whenever he feels like it. Therefore, Judge King is not a neutral, impartial judge in this case.

3. Judge King's bias against the plaintiff (me) is indicated by the following colloquies which were taken from pp. 1, 2, 10-12 of the July 9, 1979 Transcript of Proceedings in Civil No. 76-0005:

> pp. 1-2: THE COURT: * * * why do you waste your time with this kind of paperwork [motion to disqualify Judge King] when you could be doing all the other—the other things.
>
> p. 2: THE COURT: Why don't you [Poe] do that paperwork [the amended complaint] instead of wasting your time with this kind of paperwork?
>
> THE COURT: * * * why don't you file your amended complaint and have them file their answer and proceed instead of all this—byplay. * * *.
>
> p. 10: THE COURT: * * * Are you saying that it shows prejudice for me to grant an ex parte motion?
>
> MR. POE: Yes. But, Your Honor, it happened more than once.
>
> THE COURT: Well, because you [sic] apply more than once.
>
> MR. POE: Yeah, but you keep repeating the same improper granting.
>
> THE COURT: Because you keep repeating the same waste of time motion.
>
> MR. POE: You see? I think right there that shows, Your Honor, that—

p. 10: THE COURT: Well, there's no question you don't know what you're doing. I mean, the Ninth Circuit— [* * *.]

pp. 11-12: THE COURT: Well, if you want to persist in the complaint you have now, I'll give you another appeal. I'll dismiss it again . . .

MR. POE: Thank you, Your Honor.

THE COURT: . . . if you don't want to amend.

MR. POE: Thank you.

4. On September 11, 1978 in Civil No. 77-0262, *Poe v. Department of Air Force, et al.,* Judge King told plaintiff (me) on two separate occasions during a pre-trial conference:

"You [Poe] don't know your ass from a hole in the ground."

Furthermore, at the tail end of said pre-trial conference, I stated to Judge King:

"Seeking justice is not a waste of time."

Whereupon, Judge King got extremely angry at me, chastizing me in the process.

5. In 1973, Judge King was aware of and utilized the service of process provision of 28 U.S.C. 1391(e) to rule in the case of *People of Saipan v. U.S. Department of Interior, D.C.,* 356 F. Supp. 645 (U.S.D.C. Hawaii, 1973).

Three years later, in 1976, in *Poe v. General Kuyk, et al.,* Civil No. 76-0005, Judge King, using the same statute, "twisted" and/or disregarded his 1973 ruling involving 28 U.S.C. 1391(e) to rule against Poe and in favor of the military defendants, relative to venue and/or the service of process.

In April of 1979, the Ninth Circuit Court of Appeals reversed King's ruling and judgment.

6. Judge King has repeatedly and wrongfully granted *ex parte* motions which were *improperly* filed (if filed at all) by the U. S. Attorney for the District of Hawaii. For example, at 9 a.m., Feb. 25, 1976, I departed Hawaii in order to take a deposition (Civil No. 76-0005, *Poe v. General Kuyk*) in Phoenix on Feb. 26, 1976. At 10:40 a.m. that same morning, the U.S. Attorney filed an *improper ex parte* Motion for a Protective Order to stay discovery. Judge King *improperly* granted it.

On March 16, 1976, I was told by law clerk Tony Chan that Mr. William Eggers was reprimanded for this Feb. 25, 1976 action.

On April 20, 1977 in Civil No. 77-0049, *Poe v. United States of America,* Assistant U. S. Attorney Mr. Eggers (*without* any motion being filed by the defendant—a violation of the Federal Rules of Civil Procedure) once again went to Judge King (while I was actually taking depositions in the State of Ohio), seeking the issuance of another *improper* ex parte Protective Order. What did Judge King do? Judge King obliged the U. S. Attorney, and Judge King *improperly* issued an Ex Parte Protective Order, staying discovery—*in utter disregard of and contrary to* the clear evidence of record, which indicated that not only had I served the U. S. Attorney in Hawaii with Notices to take depositions on March 15, 1977, but that I had also served the Attorney General of the United States by certified mail too (certified no. 487255). I had done everything legal and proper; the U. S. Attorney had not—not even filed a motion for a protective order. The evidence of record was complete, clear, and perfect; yet *Judge King once again* improperly issued an Ex Parte Protective Order to stay discovery which again resulted in my financial loss *and* caused the suppression of the true facts. Thus, Judge King, by the pattern of his behavior, has a personal bias against the plaintiff (me) or

a prejudice in favor of the U. S. Attorney. The team of Mr. William Eggers and Judge King was not bothered by one wrongdoing (Feb. 25, 1976) because they managed to do it again on April 20, 1977.

7. Judge King has disregarded the violations of the Federal Rules of Civil Procedure by the U. S. Attorney, thereby favoring the defendant United States and/or military defendants.

8. Judge King has ruled against me solely because of a personal bias. The following colloquy illustrates this point (taken from pp. 1-2 of the Sept. 2, 1977 Transcript in Civil No. 77-0049, *Poe v. United States of America*).

> "MR. POE: . . . I claim that I followed the Rules of Civil Procedure. I did not violate any rule of the Court. I served the proper parties to take their depositions. I know of no motion made by the defendant, who is represented by Mr. Eggers, making a motion for any kind of order asking for protection.
>
> "THE COURT: . . . Suppose your motion is granted, then what are you going to do?
>
> "MR. POE: Well, at least it straightens out the injustice that was done.
>
> "THE COURT: What are you going to do then?
>
> [Irrelevant question by Judge King.]
>
> "MR. POE: I would like not to answer that, if I may.
>
> "THE COURT: In that case, your motion is denied. That takes care of it very easily."

9. Judge King gets personally upset with the plaintiff (me) during hearings. The following colloquy, taken from pp. 2-3 of Sept. 2, 1977 Transcript in Civil No. 77-0049, illustrates this point which is indicative of an underlying personal bias.

> "THE COURT: Did you appeal the dismissal?
>
> "MR. POE: I can't, your Honor, until you file a separate document calling it a judgment.
>
> "THE COURT: Well, you type it up. I don't do the work for you.
>
> "MR. POE: No. Your Honor, the Ninth Circuit told me that you can't file an appeal generally unless a separate document is filed which is called a judgment.
>
> "THE COURT: Well, type one up.
>
> "MR. POE: I'm not going to type it up, your Honor.
>
> "THE COURT: Then in that case you can't appeal. It's very simple. I'm not running your case for you. If you want to appeal, type up a separate document and call it judgment."

At pages 5-6 of the same Transcript, we find this colloquy:

> "THE COURT: Mr. Poe, you are practicing law without a license representing yourself. This Court can only go so far in leading you around by the hand.
>
> "MR. POE: I don't think you're leading me around by the hand, your Honor.
>
> "THE COURT: I'm trying not to right now. I'm not trying to give you any advice what to do. The next thing you know . . . .
>
> "MR. POE: Well, you told me to write the judgment.
>
> "THE COURT: There you go again. . . . ."

10. Judge King has *improperly* functioned as an adversary party instead of remaining neutral, impartial, and above the fray. His conduct is indicative of an under-

lying bias against me or in favor of my adversary party. In support thereof, consider the following facts and/or points:

(a) The March 12, 1976 Transcript of Proceedings in Civil No. 76-0005, *Poe v. General Kuyk,* shows that out of 1,485 total spoken words:

(1) 20 words or 1.3% were spoken by the Clerk and an Unidentified Spectator;

(2) 42 words or 2.8% were spoken by the U. S. Attorney, counsel for the military defendants;

(3) 653 words or 44% were spoken by me, plaintiff pro se;

(4) 770 words or 51.9% were spoken by Judge King.

The adversary parties were represented by Mr. Poe and Mr. Eggers. Thus, the Transcript indicated that Judge King performed the role of a defendant, or at least the role of a non-judge.

(b) The August 1, 1977 Transcript of Proceedings in Civil No. 77-0049, *Poe v. United States of America,* indicated that Judge King essentially represented the defendant United States—not the U. S. Attorney who clearly stated that he represented the defendant. The U. S. Attorney uttered 225 words *in toto* or about 1¼ pages, or about 10% of the whole transcript.

(c) The following colloquy, taken from page 1 of the Feb. 4, 1977 Transcript of Proceedings in Civil No. 76-0392, *Poe v. United States,* indicated that Judge King had no qualm about partaking as an adversary party for the United States.

"MR. EGGERS: . . . I've suggested that Mr. Poe's [complaint] will not lie because it was an activity which arose out of—

"THE COURT: While he was on active duty.

"MR. EGGERS: Yes.

"THE COURT: Citing . . .

"MR. EGGERS: Service involved. And I've cited the Feres case—

"THE COURT: Damage.

"MR. EGGERS: . . . and other cases . . . ."

11. Judge King has a bias in favor of the military and holds the tenuous view that the military is somehow "beyond the law," that the Constitution or the law applies *more to* civilians than to the military. In support thereof, consider the following colloquies, which were taken respectively from pages 8-9, 13, 25-26, and 27-28 of the Feb. 4, 1977 Transcript in Civil No. 76-0392, *Poe v. United States*:

(a) THE COURT: Well, assuming it's an arrest, what's your cause of action?

MR. POE: . . . . it was unlawful. . .

THE COURT: Why was it unlawful?

MR. POE: They violated the Air Force's own regulations and there was no probable cause, it was contrary to law, ...

* * *

MR. POE: . . . . ., but . . . these security policemen, four in number—did not know why they were arresting me.

THE COURT: They don't have to know, do they?

MR. POE: I think they do to tell—to inform the arrestee of the—

THE COURT: You're talking about civilian rights.

(b) THE COURT: . . . The Constitution has a special provision for people who are in service. When you say you don't give up your constitutional rights, your constitutional rights are not the same.

MR. POE: You mean in a practical sense or a legal sense, Your Honor?

THE COURT: The Constitution specifically provides by special language for separate treatment of people in the Armed Forces.

MR. POE: You mean, but basically changing the type of—

THE COURT: Basically changing your rights. . . .

(c) MR. POE: . . . You see, Your Honor, I think the basic thing here is that when a man tries to stand up for his rights, especially in the military, and he's only a captain and the rest of them are colonels and above, they somehow—

THE COURT: Where did you ever get the idea that military was a democratic organization?

MR. POE: Your Honor, within the Constitution—

THE COURT: By definition the military is not a democratic institution.

(d) THE COURT: Well, the amendment to the Federal Tort Claims Act, when they talk about Bivens, they're talking about civilians.

(e) In further support thereof, consider this colloquy, taken from pages 9-10 of the Aug. 1, 1977 Transcript, Civil No. 77-0049:

"MR. POE: * * *, what you're saying basically is that they [Air Force physicians] could have done

anything they wanted. They could have cut off my leg.

THE COURT: That's right.

MR. POE: . . . They could have given me a lobotomy while I was there.

THE COURT: That's right.

* * *

THE COURT: When you join the military, why, certain things will happen to you that would not happen if you were not in the military.

MR. POE: No, there are things that happen outside. But, your Honor, I don't buy the argument that, when you join the United States Air Force, you give up your basic constitutional rights and any portion of the Bill of Rights."

Further affiant sayeth naught.

/s/ Lewis W. Poe
Lewis W. Poe
3853-C Keanu St.,
Honolulu, HI 96816

Subscribed and sworn to before me this 7th day of August, 1979.

/s/ Nancy M. Mizuna
Notary Public, First Judicial
Circuit, State of Hawaii.

My commission expires: 4-24-83